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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,370	09/25/2003	Laurence E. Dahners	421/75/2	3033
25297 7590 11/09/2010 JENKINS, WILSON, TAYLOR & HUNT, P. A. 3100 Tower Blvd. Suite 1200 DURHAM, NC 27707				
EXAMINER				
BOLES, SAMEH RAAFAT				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
11/09/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/672,370

Applicant(s)

DAHNER, LAURENCE E.

Examiner

SAMEH BOLES

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-2, 4-6, 21-26 and 37-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-6, 21-26 and 37-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/2/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-508)  
Paper No(s)/Mail Date 5/5/08, 8/2/06, 3/22/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after the final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 22, 2010 has been entered. Accordingly, claims 1, 5-6, 21, 23 have been amended; claims 3, 7-20, 27-36 have been cancelled; claims 37-40 have been added, and claims 1-2, 4- 6, 21-26 and 37-40 are pending and have been examined in this office action.

#### ***Claim Rejections - 35 USC § 112***

Claims 1-6 were previously rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Applicant has amended (claim 1, line 2) to indicate that the intrafocal plate comprising all the structure limitations as recited in claim 1. Therefore the rejection is moot.

#### ***Claim Rejections - 35 USC § 102***

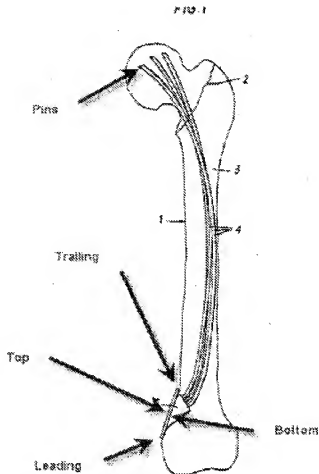
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 38 is rejected under 35 U.S.C. 102(b) as being anticipated by Ender (US Patent 4,467,793).

Ender discloses an intrafocal plate (Fig. 1) for securing bone fractures comprising: an elongate plate (5) element defining a leading ending (see modified fig. 1 below), a trailing end (see modified fig. 1 below), an intermediate location between the leading and trailing ends, an overhanging heel (17, see Fig. 7) toward the trailing end configured to prevent over reduction of a fracture and to stabilize the intrafocal plate when inserted into a fracture site of a bone, a top surface (7), and a bottom surface that is configured to engage an outer surface of a bone; and a resilient body element (4) (col. 1, lines 19-20) formed as an integral, single piece with the elongate plate element and extending downwardly from the bottom surface of the elongate plate element and in a lengthwise direction relative to the elongate plate element beyond the terminal end of the resilient plate element (Fig. 1), the resilient body extending from the intermediate location (see modified fig. 1 below) of the elongate plate element such that the overhanging heel of the elongate plate element is located between the resilient body element (4) and the trailing end of the elongate plate element (see modified fig. 1 below).



***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4-6, 21-26, 37 and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ender (US Patent 4,467,793) in view of Medoff (US. Pat. No. 5709682).

Ender discloses a longitudinally extending plate (5, Fig. 1) made of resilient material consisting of a flat, elongated plate element (7, Fig. 2) having a surface at one end having a top (7) and bottom and leading and trailing end that is sized to overlay a fracture site, and further has a longitudinally extending body element (4) integral with the plate element and is further considered adjacent but spaced apart from the trailing end of the surface of the plate element and has apertures (6). The overhanging heel portion (17) is adjacent to the trailing end and extends downwardly below the location at which the resilient body element is integral to the surface of the plate element. The heel serves to assist stabilize the fracture site. It is capable of preventing over-reduction. The intrafocal plate also has a resilient body element (4, col. 1, lines 19-20) which extends down and outward from the bottom of the surface (see modified Fig. 1 above) and further has a pin element (see modified Fig. 1 above). The body element connects at a location that is between the leading end and trailing end. The intrafocal plate further has a shoulder at the juncture of the body element and surface and further defines an acute angle (adjacent to the trailing end portion in the drawing above). The plate including a screw for insertion through an aperture (9, Fig. 2 and 3) defined in the surface of the plate element (col. 5, lines 25-29).

Ender fails to teach that the body element has a sinuous shape in a first plane according to a side elevation view of the body element, wherein the sinuous shape extending downwardly and outwardly from the bottom surface of the elongate plate element in the first plane, wherein the body element has a first portion, a second portion a third portion and a fourth portion, wherein the first portion curves away from the plate

element, the second portion curves toward the plate element, the third portion curves away from the plate element and the fourth portion curves toward the plate element; and the body element defining a straight shape according to a top elevation view of the body element.

Medoff teaches a body element (Fig. 3) has a sinuous shape in a first plane according to a side elevation view (Fig. 3) of the body element, wherein the sinuous shape extending downwardly and outwardly in the first plane (Fig. 3), wherein the body element has a first portion, a second portion a third portion and a fourth portion for fixation of one or more bone fragments (abstract; see Fig. 5), wherein the first portion curves away from the first part (41, may be considered as a plate element) (see modified Fig. 5 below), the second portion curves toward the plate element (see modified Fig. 5 below), the third portion curves away from the plate element (see modified Fig. 5 below) and the fourth portion curves toward the plate element (see modified Fig. 5 below); and the body element defining a straight shape according to a top elevation view (Fig. 2) of the body element.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the resilient body element of Ender from a sinuous shape from first, second, third and fourth curved portions extending downwardly and outwardly from the bottom surface of the plate in view of Medoff for enhancing fixation of one or more bone fragments.

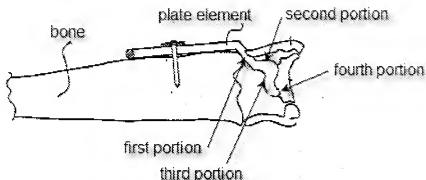


Fig. 5

### ***Response to Arguments***

Applicant's arguments with respect to the prior art of Ender have been fully considered but they are not persuasive.

Applicant argues that the intrafocal plate as recited in claims 1, 5-6, 21 and 38 is not disclosed, taught, suggested by or inherent in Ender because Ender includes a tubular insert member. The insert member is not flat on the side that faces bone and from which the nails will extend, because it needs the tubular portion for insertion into the impact hole as recited in Ender.

Examiner respectfully disagrees, since Ender teach a flange (7) (may be considered as a plate), wherein the flange is flat (Fig. 2) on the side that faces bone (Fig. 1) and from which the nails (4) will extend.



Applicant's arguments with respect to claims 1, 5, 6 and 21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMEH BOLES whose telephone number is (571)270-5537. The examiner can normally be reached on Monday - Friday 7:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAMEH BOLES/  
Examiner, Art Unit 3775

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art  
Unit 3775

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